IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 302 OF 2005
WITH WRIT PETITION NO.2360 OF 2005

Baif Development Research Foundation.
....Petitioner.
Vs.
Bharatiya Krishi Udyog Pratishthan.
....Respondent.
.....

Bharatiya Krishi Udyog Pratishthan Karmachari Sanghathana.
....Petitioner.
Vs.

BAIF Research and Development Foundation.
....Respondent.
.....
Mr. P.M. Huddar with Mr. M.V.G. Krishna for Petitioner.

Mr.N.A. Kulkarni for Respondent.

CORAM : B.H. MARLAPALLE,J.
DATED : 11TH APRIL,2005.

P.C.:

1. Heard Mr. Huddar, the learned counsel for the petitioner in Writ Petition No.302 of 2005 and Mr. Kulkarni, the learned counsel for the petitioner in Writ Petition No.2360 of 2005. Both the petitions are inter connected and therefore, they can be disposed of by common order.

2. Bharatiya Krishi Udyog Pratishthan Karmachari Sanghatana has filed Complaint (ULP) No.327 of 2004 before the Industrial Court at Pune on or about 15.12.2004. In the said complaint, an application Exh. U-10 came to be filed on which an exparte order was passed by the Industrial Court on 5.1.2005 in the following words :

> "Transfer order of all or any of the office bearers of the complainant union is stayed till 15.1.2005".

3. The employer i.e. Baif Development Research Foundation filed an application and prayed for vacating the exparte order dated 5.1.2005. The Industrial Court by order dated 15.1.2005 extended the exparte stay order dated 5.1.2005. The hearing of the said application was expedited. This order came to be challenged in Writ Petition No.302 of 2005 and while issuing the notice by order dated 3.2.2005, this court has directed that the application Exh.U-10 be decided by 15.2.2005. In the mean while ad-interim stay to the impugned order was granted.

4. On 5.3.2005, Stay order was passed on Exh.C-5

filed by the employer requesting the court to frame the preliminary issue in the following manner:

> "As to whether the employees on whose behalf the complaint is filed are the workmen under Section 2(s) of the Industrial Disputes Act, 1947 or not."

The Complaint(ULP) Nos. 117 of 2005 and 118 of 2005 came to be filed on 1.3.2005 against the transfer orders dated 19.2.2005 and 22.2.2005. An application at Exh.C-6 has been filed by the employer in both these complaints and it has been allowed by the Industrial Court vide its order dated 15.3.2005. It has been directed that till the disposal of the interim application in Complaint No.327 of 2004, interim application at Exh. U-2 in Complaint (ULP) Nos. 117 of 2005 and 118 of 2005 would remain stayed. Hence, this second petition by Union.

5. The stay order passed by the Industrial Court below Exh.U-10 on 5.1.2005 in the first complaint i.e. Complaint (ULP) No,. 327 of 2004 and the subsequent order directing its extension is without any reasons and against the well established

position of law. Unless prima facie case of unfair labour practice is found to be established by the Industrial Court, an application under sub-section(2) of Section 13 of M.R.T.U. & PULP Act cannot be entertained for any interim relief. It would be therefore, in the interest of both the parties that the application filed at Exh.U-10 in Complaint (ULP) No.327 of 2004 and the application filed at Exh.U-2 in the fresh complaint are decided by framing a specific issue regarding prima facie case of unfair labour practice. The Industrial Court is therefore, directed to frame specific issues on the applications at Exh.-10 in Complaint (ULP) Nos. 117 of 2005 and 118 of 2005. The applications may be decided as expeditiously as possible and preferably within a period of two months from the receipt of writ from this court and till then the order passed by this court on 3.2.2005 would continue.

6. If the complaints are pending before two different courts, they shall be clubbed together and be placed before any of them.

7. Both the petitions are accordingly disposed of in terms of the above order.

(B.H.MARLAPALLE, J)